

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 03-2172

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United States of America,

Appellee,

v.

LeVarges Lenard Brown,

Appellant.

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\* Appeal from the United States  
\* District Court for the  
\* District of Minnesota.  
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\* [UNPUBLISHED]  
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Submitted: April 6, 2004

Filed: April 15, 2004

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Before MELLOY, HANSEN, and COLLOTON, Circuit Judges.

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PER CURIAM.

After LeVarges Brown pleaded guilty to possessing with intent to distribute approximately 108 grams of cocaine base, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A), the district court<sup>1</sup> sentenced him to 262 months imprisonment and 5 years supervised release. Brown appeals, and we affirm.

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<sup>1</sup>The Honorable John R. Tunheim, United States District Judge for the District of Minnesota.

Brown argues that the district court erred by concluding that it lacked authority to grant Brown's motion for downward departure under U.S.S.G. § 4A1.3. We have carefully reviewed the sentencing transcript, and we find no basis to conclude that the court believed it lacked authority to depart. Rather, the district court made a clearly discretionary decision not to depart under section 4A1.3 after reviewing Brown's criminal history and finding it to be "extensive" and "significant." The district court's decision is, therefore, unreviewable. See United States v. Waltermán, 343 F.3d 938, 942 (8th Cir. 2003) (court has no authority to review district court's discretionary decision not to downwardly depart, except where district court believed it lacked power to exercise its discretion).

The judgment is affirmed.

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